

**TENNESSEE DEPARTMENT OF REVENUE
REVENUE RULING # 07-06**

WARNING

Revenue rulings are not binding on the Department. This presentation of the ruling in a redacted form is information only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Departmental policy.

SUBJECT

Whether fees paid for temporary motor vehicle tags issued or assigned by a dealer to bona fide motor vehicle purchasers or lessees are subject to the Tennessee sales and use tax or the Tennessee business tax when such fees are stated separately on the customer's invoice.

SCOPE

Revenue rulings are statements regarding the substantive application of law and statements of procedure that affect the rights and duties of taxpayers and other members of the public. Revenue rulings are advisory in nature and are not binding on the Department.

FACTS

[A REPRESENTATIVE OF TAXPAYER'S] has requested a revenue ruling pursuant to Tenn. Code Ann. § 67-1-109 regarding transactions in which Tennessee motor vehicle dealers transfer or assign temporary motor vehicle tags to bona fide motor vehicle purchasers.

Motor vehicle dealers in Tennessee may apply to the Tennessee Department of Revenue (the "Department") for issuance of temporary motor vehicle tags ("temporary tags"). Dealers may also assign and issue temporary tags to bona fide purchasers of vehicles or to persons to whom a motor vehicle is loaned or rented for use as a private passenger vehicle for a temporary period.

Dealers are charged for the temporary tags issued, and when dealers issue or assign a temporary tag to a bona fide purchaser or lessee, the dealer passes the charge on to the purchaser by separately identifying the temporary tag charge on the invoice. All charges for temporary tags are remitted to the Department with no portion being retained by the dealer. The dealer is not compensated for this service.

QUESTIONS PRESENTED

1. Are Tennessee motor vehicle dealers required to collect and remit Tennessee sales and use tax on charges for temporary motor vehicle tags issued or assigned to bona fide motor vehicle purchasers or lessees when the charge for the temporary tag is separately stated on the customer's invoice?
2. Are Tennessee motor vehicle dealers required to collect and remit Tennessee business tax on charges for temporary motor vehicle tags issued or assigned to bona fide motor vehicle purchasers or lessees when the charge for the temporary tag is separately stated on the customer's invoice?

RULINGS

1. No.
2. No.

ANALYSIS

APPLICABLE STATUTES AND RULES AND REGULATIONS

Effective July 1, 2006, Executive Order No. 36, transferred the Division of Title and Registration and all motor vehicle title and registration responsibilities from the Department of Safety to the Department of Revenue. The Department of Revenue now has the responsibility for administering the motor vehicle title and registration statutes contained in Title 55, Chapters 1-6 of the Tennessee Code Annotated.

Tenn. Code Ann. § 55-4-101(a) and (b), set forth below, require registration of a motor vehicle before it can be operated on the streets or highways of Tennessee:

- (a) (1) As a condition precedent to the operation of any motor vehicle upon the streets or highways of this state, such vehicle shall be registered as herein provided.
- (2) Such registration and the fees provided therefore shall constitute a privilege tax upon such operations.
- (b) The commissioner shall be, and is hereby constituted the registrar of motor vehicles and, except as otherwise provided in chapters 1-6 of this title, every owner of a vehicle intended to be operated in this state and required by this chapter to be registered shall, before same is operated, apply to the department for the registration of and the registration plates for such vehicle.

Note that Tenn. Code Ann. § 55-4-101(a)(2) states that the fees provided by law in connection with the registration of a motor vehicle, which includes the issuance of registration plates, constitute a privilege tax upon operation of the motor vehicle. The statute does not characterize the registration and issuance of registration plates as a sale of tangible personal property.

Tenn. Code Ann. § 55-4-103(a)(1)-(3) makes the following provisions concerning the issuance of temporary operation permits for motor vehicles:

- (1) "Temporary operation permit" means a permit which the commissioner is authorized to issue to an applicant desiring to operate a motor vehicle, otherwise subject to registration in Tennessee, over the streets and highways of this state for a temporary period of thirty (30) days, where it appears that the proposed operation is actually temporary in character. The fee for this issuance shall be five dollars and fifty cents (\$5.50). The commissioner shall also have the authority to issue one (1) additional temporary operation permit for a period of thirty (30) days upon payment of an additional five dollars and fifty cents (\$5.50) fee.
- (2) A temporary operation permit shall not be renewed or another permit issued to cover the operation of the same motor vehicle except upon the written authorization of the commissioner. The commissioner is authorized to refuse the issuance of a temporary operation permit herein provided when it appears that any owner of a motor vehicle is using such permit as a subterfuge to avoid registering such motor vehicle.
- (3) Any person operating a motor vehicle on a temporary operation permit which has expired or in violation of the terms thereof commits a Class C misdemeanor and, in addition shall be required to register the vehicle concerned with the department and the arresting officer shall not permit the vehicle to leave such officer's charge or custody until the proper registration thereof has been effected.

Tenn. Comp. R. & Regs. 1340-5-10, pertinent parts of which are set forth below, make the following provisions concerning "temporary tags."

- .01 Subject to the limitations and conditions hereinafter set forth, duly qualified dealers may apply to the Motor Vehicle Division of this Department for and be issued "temporary tags" . . . [.]
- .04 A dealer may assign and issue a temporary tag to a bona fide purchaser for the vehicle sold to such person by the dealer or to a person for an automobile loaned or rented to him by the dealer for use as a private passenger vehicle during such period as the person is awaiting delivery of

an automobile for which he has contracted or awaiting return of his own vehicle from the dealer's repair shop or garage . . . [.]

.07 Every dealer shall be entitled to reimbursement from the purchaser in the amount of the statutory fee for each "tag" issued but he is not authorized to collect additional amounts as service or other charges.

.09 A "temporary tag" may be used only by (or for) the person to whom it was assigned and displayed only on the vehicle for which it was issued.

Motor vehicle dealers often issue a temporary tag to the purchaser of a motor vehicle so that the vehicle can be lawfully operated on public streets and highways while the titling and registration of the vehicle is in process and permanent license plates are being obtained.

Tenn. Code Ann. § 67-6-202(a), set forth in pertinent part below, levies the Tennessee sales and use tax on the privilege of selling tangible personal property at retail in Tennessee:

(a) For the exercise of the privilege of engaging in the business of selling tangible personal property at retail in this state, a tax is levied on the sales price of each item or article of tangible personal property when sold at retail in this state; the tax is to be computed on gross sales for the purpose of remitting the amount of tax due the state and is to include every retail sale.

Tenn. Code Ann. § 67-4-704(a) and (b) levies the Tennessee business tax on the privilege of making sales by engaging in any vocation, occupation, business or business activity enumerated, described or referred to in Tenn. Code Ann. § 67-4-708(1)-(4). Tenn. Code Ann. § 67-4-708(1)-(4) enumerates certain sales of tangible personal property as being subject to the tax and Tenn. Code Ann. § 67-4-708(2)(F) subjects to the business tax any sale of tangible personal property not specifically enumerated or described elsewhere in Title 67, Chapter 4, Part 7.

"Tangible personal property" is defined for Tennessee sales and use tax purposes by Tenn. Code Ann. § 67-6-102(45)(A), set forth in pertinent part below:

(A) "Tangible personal property" means and includes personal property that may be seen, weighed, measured, felt, or touched, or is in any other manner perceptible to the senses.

Tenn. Code Ann. § 67-4-702(a)(20) defines tangible personal property in the same manner for purposes of the Tennessee business tax.

Certain services named in Tenn. Code Ann. § 67-6-102(34)(F) are also subjected to Tennessee sales and use taxes by Tenn. Code Ann. § 67-6-205(a), but the

registration of motor vehicles is not one of the taxable services specified by the law. Likewise, registration of motor vehicles is not one of the services subjected to the Tennessee business tax by Tenn. Code Ann. § 67-4-708(3)(C).

Tenn. Code Ann. § 67-6-102(37) states that the sales tax is levied on the “sales price” of the tangible personal property or the taxable service sold. Tenn. Code Ann. § 67-4-709 applies the business tax rates to both wholesale and retail taxable receipts of a business.

APPLICATION OF STATUTES AND RULES AND REGULATIONS TO QUESTIONS PRESENTED

It is without dispute that the temporary tags that motor vehicle dealers issue to bona fide motor vehicle purchasers or lessees for a temporary period are tangible personal property. If the \$5.50 charge made by the motor vehicle dealer to each customer to which a temporary tag is issued is for the sale of the temporary tag, then the charge is subject to both the Tennessee sales and use tax and the Tennessee business tax.

However, if the \$5.50 charge is for an intangible right rather than for the sale of tangible personal property, it is subject to neither the sales and use tax nor the business tax when the charge is separately stated on the customer’s invoice.

There are several indications that the charges made by a motor vehicle dealer when issuing a temporary tag to his customer is for intangible rights rather than for the sale of the tags themselves, which are tangible personal property.

First, the motor vehicle registration and licensing statutes found in Title 55, Chapter 4 of the Tennessee Code Annotated do not characterize fees charged in connection with securing authorization to operate a motor vehicle on the streets and highways of Tennessee as resulting from the sale of temporary tags. Tenn. Code Ann. § 55-4-101(a)(1) and (2), set forth again below, state that the registration of a motor vehicle, which would involve the issuance of license plates, is a condition precedent to its operation on the streets and highways of Tennessee and that the fees in connection with such registration are privilege taxes upon the operation of a motor vehicle on the streets and highways of this state.

- (a) (1) As a condition precedent to the operation of any motor vehicle upon the streets or highways of this state, such vehicle shall be registered as herein provided.
- (2) Such registration and the fees provided therefore shall constitute a privilege tax upon such operations.

In *United States Fidelity & Guaranty Co. et al. v. Allen*, 14 S.W.2d 724 at 725 (Tenn. 1929) the Tennessee Supreme Court made the following statement about the purpose of Tennessee's motor vehicle registration statutes:

Our statutes requiring the registration of automobiles were enacted not alone for revenue purposes, but as a means of identification of the owner of any machine negligently operated to the damage of person or property and by way of protection to those so injured by such negligent operations.

Tennessee's motor vehicle registration statutes, including Tenn. Code Ann. § 55-4-115(a)(1)-(3) permitting the issuance of temporary tags, appear to have been enacted for the purpose of regulating the operation of motor vehicles on the streets and highways of Tennessee under the police power of the governing authority.

This is consistent with the proposition that fees charged in connection with temporary tags issued to allow a motor vehicle otherwise subject to registration to temporarily operate on the highways of the State of Tennessee are not for the sale of the tags, but are for the license, or right, to operate the vehicle on the streets and highways of this state. The temporary tag obtained with payment of the fee is only a tangible evidence of the right to operate the vehicle on public streets and highways for a temporary period of time during which the vehicle is not actually registered.

It is quite common for an intangible right to be represented by the issuance of a certificate, card, coupon or other tangible evidence. In *Barnes & Noble Superstores, Inc. v. Huddleston*, WL 596955 (Tenn.Ct.App. 1996) the Tennessee Court of Appeals had the opportunity to consider the application of Tennessee's sales and use tax in such a situation.

In *Barnes & Noble*, customers paid a \$10.00 annual fee for a Reader's Choice Club membership card that entitled them to a 10% discount on merchandise in all of the taxpayer's stores. The court held that the club membership card issued the customer was merely an indicia of the intangible right to purchase merchandise at a discount and incidentally aided the customer in the exercise of that right. The court held that the cards themselves were not subject to Tennessee sales and use tax.

CONCLUSION

For the reasons explained above, the fees paid for temporary motor vehicle tags issued or assigned by a dealer to bona fide motor vehicle purchasers or lessees are not for the sale of tangible personal property in the form of the temporary tags. Such fees are for the intangible right to operate the vehicle on public streets and highways for a temporary period of time during which the vehicle is not actually registered.

Under the facts presented, fees paid by customers to dealers for issuance of temporary tags under the provisions of Tenn. Code Ann. § 55-4-115(a)(1)-(3) and Tenn. Comp. R. & Regs. 1340-5-10 are not subject to Tennessee sales and use taxes or Tennessee business taxes when such fees are separately stated on the customer's invoice.

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APPROVED: Reagan Farr, Commissioner

DATE: 3-7-07